

**ENTERED**

January 09, 2024

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

KOTA ME PATATES LLC,

Plaintiff,

VS.

NATIONWIDE MUTUAL FIRE  
INSURANCE COMPANY,

Defendant.

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CIVIL ACTION NO. 4:23-CV-01573

**ORDER**

Before the Court are United States Magistrate Judge Yvonne Y. Ho's Memorandum and Recommendation filed on December 21, 2023 (Doc. #19), Plaintiff Kota Me Patates, LLC's ("KMP") Objections (Doc. #20), Defendant Nationwide Mutual Fire Insurance Company's ("Nationwide") Response (Doc. #21), and KMP's Reply (Doc. #22). The Magistrate Judge's findings and conclusions are reviewed de novo. FED. R. CIV. P. 72(b); 28 U.S.C. § 636(b)(1); *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989). Having reviewed the parties' arguments and applicable legal authority, the Court adopts the Memorandum and Recommendation as its Order.

For the first time in its Objections, KMP argues that the meaning of the term "NOT PROVIDED" as used on the property declarations page of the parties' business insurance policy is ambiguous. Doc. #20; *see also* Doc. #7, Ex. 1 at 13. KMP failed to raise this argument in its Response to Nationwide's Motion for Summary Judgment (Doc. #7). *See* Doc. #8. In fact, the word "ambiguous" is not used in KMP's Response at all. *See id.* The Fifth Circuit has held that "a party who objects to the magistrate judge's report waives legal arguments not made in the first

instance before the magistrate judge.” *Freeman v. Cnty. of Bexar*, 142 F.3d 848, 851 (5th Cir. 1998). Accordingly, KMP’s objections to the Memorandum and Recommendation based on the ambiguity of “NOT PROVIDED” are overruled.

Thus, for the foregoing reasons, the Court ADOPTS the Memorandum and Recommendation as its Order. Nationwide’s Motion for Summary Judgment (Doc. #7) is GRANTED in its entirety, and KMP’s Motion to Compel Appraisal (Doc. #5) is DENIED. Concurrent with this Order, the Court will enter a separate final judgment pursuant to Rule 58(a) of the Federal Rules of Civil Procedure.

It is so ORDERED.

**JAN 08 2024**

Date



The Honorable Alfred H. Bennett  
United States District Judge